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DEPARTMENT OF LAW
CITY OF YONKERS

April 24, 2007

Honorable William Bouteiller
Administrative Law Judge
NYS Department of Public Service
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case 06-T-0710 Application of Consolidated Edison
Company of New York, Inc. for a Certificate of
Environmental Compatibility and Public Need
Under Article VII of the New York State Public
Service Law for the M29 Transmission Line

Dear Judge Bouteiller:

The City of Yonkers submits this initial brief in accordance with your March 20,
2007 ruling in this proceeding. Five hard copies of this initial brief are being submitted
to the Secretary via overnight mail. This response has also been served electronically to
the Active Parties List as of February 27, 2007.

Respectfully submitted,

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CC: Hon. Jaclyn A. Brillling, Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350
BY OVERNIGHT MAIL

Active Parties
BY E-MAIL

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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Application of Consolidated Edison :
Company of New York, Inc. for a
Certificate of Environmental Compatibility :
and Public Need Under Article VII of the
New York State Public Service Law for the :
M29 Transmission Line Project

Case No. 06-T-0710

**INITIAL BRIEF
TO THE
ADMINISTRATIVE LAW JUDGE
SUBMITTED BY
THE CITY OF YONKERS**

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April 24, 2007

INTRODUCTION

On June 14, 2006, Consolidated Edison Company of New York, Inc. filed with the New York State Public Service Commission an application for a Certificate of Environmental Compatibility and Public Need for its proposed M29 Transmission Line Project. The Commission instituted Case No. 06-T-0710 to review the application. Active parties filed testimony regarding Consolidated Edison's application on December 22, 2006 and Consolidated Edison filed rebuttal testimony on January 12, 2007. New York Presbyterian Hospital and Time Warner Cable filed testimony regarding Consolidated Edison's application on January 15, 2007 and Consolidated Edison filed rebuttal testimony on January 19, 2007.

Beginning on January 22, 2007, Administrative Law Judge William Bouteiller conducted evidentiary hearings regarding the testimony filed in this proceeding. On February 22, 2007, Department of Public Service Staff and the New York State Thruway Authority submitted testimony regarding Consolidated Edison's application and on March 5, 2007, active parties filed rebuttal testimony. On March 19, 2007 evidentiary hearings were conducted regarding testimony filed on February 22, 2007 and March 5, 2007. At the conclusion of the hearings on March 19, 2007, Administrative Law Judge William Bouteiller established April 24, 2007 and May 8, 2007, respectively, as the dates by which parties may file initial and reply briefs.

This is the initial brief of the City of Yonkers filed in the above-captioned proceeding.

ARGUMENT

The Public Service Commission must deny Consolidated Edison Company of New York's ("Consolidated Edison") application for a Certificate of Environmental Compatibility and Public Need Under Article VII of the New York State Public Service Law for the M29 Transmission Line ("Application"). Under Public Service Law §126(1), "the Commission may not grant a certificate for the construction or operation of a major utility transmission facility, either as proposed or as modified by the commission, *unless it shall find and determine*" the seven criteria set forth in §126(1)(a)-(g). (Emphasis added.) The Commission must deny Consolidated Edison's application based upon its failure to meet two of the required criteria. The "nature of the probable environmental impact" of Consolidated Edison's proposed M29 Transmission Line cannot be determined as a result of Consolidated Edison's failure to adequately study the environmental impacts of the project upon the communities along the route.¹ Furthermore, the facility, as proposed by Consolidated Edison, does not "represent the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations..."² Absent such findings and determinations the Commission should not grant a certificate of environmental compatibility and public need under Article VII to Consolidated Edison for the M29 Transmission Line.

¹ N.Y. PSL §126(1)(b) (McKinney 2007).

² N.Y. PSL §126(1)(c) (McKinney 2007).

A. Consolidated Edison Has Failed To Accurately Identify and Assess Environmental Impacts Within The Project Area.

Consolidated Edison's Article VII Application for its proposed M29 Transmission Line Project is subject to 16 NYCRR Part 86 §86.5(a) requires that the application must describe studies that were conducted to assess the impact of the proposed facility on the environment including a description of the methods used in the study and a summary of findings. The application must also identify construction related impacts or changes. The Introduction to Exhibit 4 of Consolidated Edison's Application, titled "Environmental Effects," states that certain methods including field investigations, literature reviews and agency consultations were used to "identify and assess existing environmental conditions within the Project area"³ and that "the *impact studies* describe existing conditions, methodologies used in the investigation, the anticipated environmental effects of the transmission facilities and, where appropriate, recommended mitigation measures to avoid or minimize any adverse impacts."⁴ (Emphasis Added.)

Consolidated Edison's experts maintain that "[c]onstruction noise-related impacts from the proposed 345kV transmission line are expected to be primarily short term at any given location and therefore minimal."⁵ Yet, when questioned as to the kinds of *impact studies* Consolidated Edison conducted to determine the noise impacts of construction on specific locations along the route, Consolidated Edison's noise expert, Mr. Agresti, testified that noise studies had not been conducted for particular locations along the route.⁶ Mr. Agresti went on to admit that Consolidated Edison had not even conducted

³ Consolidated Edison Application Exhibit 4 at 4.1-1.

⁴ *Id.* at 4.1-2.

⁵ Tr. p.252 lines 11-12.

⁶ Tr. p.338 lines 1-8

noise impact studies at any of the schools located along the proposed route.⁷ Even more surprisingly, Mr. Agresti was unable to testify to the number of schools along the proposed route.⁸ Even in its Application Consolidated Edison fails to identify any of the schools located along the proposed route within the City of Yonkers.

Consolidated Edison's experts testified that "[t]he impact of construction related traffic associated with installation of the transmission facilities is expected to be minimal."⁹ When questioned as to whether traffic studies had been conducted for a specific road along the proposed route however, Consolidated Edison's traffic expert, Mr. Dempsey, testified that, "[w]e did not do any specific analysis of level of service,"¹⁰ and that, "we give a general review of the roads."¹¹

MS. O'SHEA: So [your statement that traffic impacts associated with installation of transmission facilities is expected to be minimal] was based on discussions and not on quantitative studies as to traffic patterns on Tuckahoe Road or any of the roads affected in Yonkers, correct?

MR. DEMPSEY: Based upon review of the roads, not specific analysis.¹²

Furthermore, when asked whether Consolidated Edison had decided where vehicles would be diverted while roadways were closed, Mr. Dempsey stated, "It has not been reviewed in complete detail the actual route."

Mr. Dempsey, Consolidated Edison's traffic expert, who concluded that the impact to traffic would be minimal, was not aware of how many buses are dispatched from the Liberty Lines Bus Garage which is located directly on the proposed route,¹³ nor

⁷ Tr. p.338 lines 16-21.

⁸ *Id.* at lines 9-12.

⁹ Tr. p.252 lines 5-6.

¹⁰ Tr. p.323 lines 5-11.

¹¹ *Id.* at lines 23-24.

¹² Tr. p. 324 lines 1-18.

¹³ Tr. p.332 lines 6-10.

did he know how many firehouses were located directly on the proposed route¹⁴, and his only knowledge of the number of school bus stops located along the proposed route within the City of Yonkers came from rebuttal testimony submitted by the City of Yonkers.¹⁵ Similarly, Mr. Beccalori, Consolidated Edison's Construction Manager, was unable to testify to the traffic volumes, the number of bus routes, the number of buses that depart the Liberty Lines Bus Terminal on Saw Mill River Road, or the number of school bus routes along the proposed route within the City of Yonkers.¹⁶ Incredulously, Consolidated Edison's Application Exhibit E-6 "Effects on Transportation" fails to consider or even mention school buses and how they might be affected. Despite its failure to even identify or assess these serious impacts, Consolidated Edison maintains that the impacts to traffic would be minimal. The City of Yonkers could not disagree more strongly with these baseless and unfounded assertions.

Consolidated Edison has also failed to conduct any studies to determine the construction related impacts on response times of emergency response vehicles. This was made abundantly clear by Mr. Beccalori's response of, "No, of course not, absolutely not," when asked whether Consolidated Edison conducted studies to determine the impact of construction on emergency vehicle response times.¹⁷

Consolidated Edison has not made a thorough analysis and investigation into the proposed route in the City of Yonkers. This is evidenced by the fact that Consolidated Edison was not aware of several of the largest development projects in Westchester County and the region that are being planned along the proposed route within the City of

¹⁴ Tr. p.334 lines 11-18.

¹⁵ Tr. p.335 lines 16-20.

¹⁶ Tr. p.1083 lines 4-25, p.1084 lines 1-2.

¹⁷ Tr.p.848 lines 19-22.

Yonkers and are due to commence construction in the very near future. The six hundred million dollar (\$600,000,000) Ridge Hill Development Project is located at the start of Consolidated Edison's proposed route adjacent to the Sprain Brook Substation. The Ridge Hill Development is slated to begin construction at just about the same time Consolidated Edison is planning to begin work in the City of Yonkers. As if it was not bad enough that Consolidated Edison's experts were not fully aware of the Ridge Hill Development Project and therefore did not consider it when drawing their conclusions, there is also a much larger multi-billion dollar downtown Yonkers revitalization project being developed by Struever, Fidelco, Cappelli. This Downtown Yonkers Revitalization Project which includes, but is not limited to, a baseball stadium, hotel, new Fire Headquarters, and Government Offices is planned to be constructed at the end of Consolidated Edison's proposed route in the City of Yonkers on Nepperhan Avenue, Broadway and Prospect Street.

Consolidated Edison's proposed route within the City of Yonkers is anchored on each end by these major development projects. Unbelievably, in its Application Consolidated Edison did not even make mention of these major development projects, which are some of the largest in the region if not the state, let alone study the impacts of development projects occurring simultaneously with Consolidated Edison's proposed construction.

Consolidated Edison's proposed route traverses some of the busiest and most traffic plagued streets in the City of Yonkers. The major impacts to the City and its residents as a result of construction of the M29 Transmission Line are considerable standing alone, but when combined with the simultaneous construction of development

projects within the City, the impacts are devastating. If the Application is granted, the City will be crippled bringing traffic to a grinding halt. Such large scale development occurring simultaneously with Consolidated Edison's Project is without question something that should have been studied and considered when selecting a route. To conclude that the construction related impacts to the City of Yonkers will be minimal without having considered the simultaneous construction of these development projects along the route is unfathomable and irresponsible.

Consolidated Edison's conclusory statements that construction-related impacts will be minimal are based on assumptions and not on actual studies. Consolidated Edison's failure to conduct any studies of the levels of service and impacts on traffic, the noise impacts, the emergency response time impacts, and the impacts to development projects during construction for the proposed route is plainly unacceptable.

Ms. O'Shea: ... So looking at your route evaluation criteria, in determining the optimal route, you are really looking for the route that is the most convenient and least expensive to Consolidated Edison, is that correct?

Mr. Mooney, Jr.: Yes, yes.¹⁸

These assumptions and conclusory statements fail to satisfy the requirements of 16 NYCRR Part 86. In order to serve the best interests of the general public the Public Service Commission must hold Consolidated Edison to a higher standard than mere assertions and unsubstantiated, conclusory opinions in assessing potential environmental and construction related impacts.

¹⁸ Tr. p.320 lines 5-10.

B. Consolidated Edison's Proposed Route For The M29 Transmission Line Would Cause Severe Traffic Impacts Within The City Of Yonkers.

Consolidated Edison is proposing a route for its M29 Transmission line that traverses through the busiest and most populated areas of the City of Yonkers. It is also one of the densest commercial and industrial areas in the City. More than one-third of the City's population lives along the proposed route. Consolidated Edison is proposing major road work and street closings along several of the City's primary arterial roads, including: Tuckahoe Road, Saw Mill River Road, Nepperhan Avenue, Old Nepperhan Avenue, and Riverdale Avenue.

These roadways, by definition, are major truck routes in the City of Yonkers and are the backbone of our transportation system. These routes connect all major limited access highways to the City's commercial, industrial, and residential areas. They carry extremely high volumes of commercial truck traffic as well as commuter vehicles both into and out of the City.¹⁹

Construction along Consolidated Edison's proposed route will inevitably cause unavoidable traffic grid-lock due to the absence of alternate routes capable of handling diversions from several of these roads. The streets in the City of Yonkers, unlike the streets in the City of New York, are not set up in a grid system that would allow safe and appropriate detours. Consolidated Edison's proposed route also traverses four of the busiest intersections in the City of Yonkers:

- Tuckahoe Road at Saw Mill River Road
- Nepperhan Avenue at Ashburton Avenue
- Nepperhan Avenue at South Broadway
- Riverdale Avenue at Prospect Street.²⁰

¹⁹ Tr. p.685 lines 13-17.

²⁰ Tr. p.687 lines 2-3.

The project as proposed by Consolidated Edison will require approximately "thirty feet of width for excavating machinery and movement of dump trucks and pipe handling equipment."²¹ In addition to the thirty feet of width, there must also be sufficient room for 300 ton cranes for the installation of manholes every 1500 to 2000 feet and a required area of "approximately 450 feet by 25 feet wide" for positioning cable feeding equipment.²² This project requires a vast amount of space and would necessitate the closure of approximately two lanes of traffic for up to four weeks at a time. Consolidated Edison maintains that since work will be conducted during off peak hours traffic will be minimally impacted. This however, is not accurate. Lane closures will be required twenty-four (24) hours a day for three to four weeks once splicing operations commence as "manholes would have to be occupied around-the-clock."²³ This means that regardless of whether work is being conducted during peak or off-peak hours traffic will still be severely impacted because portions of the roadway will remain closed.

This problem of round-the-clock lane closures is further exacerbated by the fact that the streets along Consolidated Edison's proposed route in the City of Yonkers are already plagued with traffic problems when operating at full capacity with all lanes open. This is especially true for Tuckahoe Road which is one of the City's major East to West corridors with the nearest alternative East to West route several miles away. "This is an already congested roadway where brief shut-downs of a single lane have been known to back up traffic for blocks."²⁴

²¹ Tr. p.824 lines 1-3.

²² *Id.* at lines 4-8.

²³ Tr. p.825 lines 16-17. *See Also* Tr. p.1070 lines 20-25.

²⁴ Tr. p. 670 lines 9-10.

Consolidated Edison's proposed route in the City of Yonkers will affect over 206 school bus routes and many Westchester County Bee-Line Bus routes which are the primary means of transport for Yonkers high school students. "Delays caused by open trenches, construction equipment and trucks in the traveled roadway will affect a proportionally higher number of citizens, as it will impact not only those who live and work in the project area but also those who use the Westchester County Bee-Line bus."²⁵ Consolidated Edison's proposed route also passes directly in front of the Liberty Lines (operator for the County Bee-Line system) bus garage on Old Nepperhan Avenue which will cause further disruptions in service not only in the City of Yonkers but for the entire Westchester County Bus System.

Consolidated Edison maintains that construction related traffic impacts within the City of Yonkers will be "minimal." Consolidated Edison, however, failed to substantiate this conclusion with any studies. Consolidated Edison's traffic expert testified that no studies had been conducted to analyze traffic levels of service at specific points along the route.²⁶ Consolidated Edison did not compare traffic conditions of the alternative routes to those of the proposed route,²⁷ instead they, "just looked on general traffic conditions along the preferred route."²⁸ Consolidated Edison admitted that they did not even conduct any traffic counts or pedestrian counts along the proposed route.²⁹ Interestingly, however, Consolidated Edison's traffic expert was able to testify to the traffic volumes on I-87, the alternative route proposed by the City of Yonkers.³⁰ It would seem that

²⁵ Tr. p.686 lines 14-18.

²⁶ Tr. p.323 lines 5-11.

²⁷ Tr. p.369 lines 11-16 and Tr. p.314 lines 14-19.

²⁸ *Id.* at lines 14-16.

²⁹ Tr. p.371 lines 5-18.

³⁰ Tr. p.1105 lines 2-11.

Consolidated Edison put more effort into studying why they should not use the alternative route proposed by the City of Yonkers than they did into studying their own proposed route.

Consolidated Edison's complete lack of data to back up its conclusions that the impacts on traffic will be minimal is unacceptable. Consolidated Edison should not be allowed to base their conclusions on mere assertions especially when the welfare of so many people is at stake. Consolidated Edison should be required to perform studies to determine the potential impacts of traffic on all of the alternative routes and most importantly on Consolidated Edison's own proposed route.

In the absence of any studies or data to confirm Consolidated Edison's conclusions about traffic impacts the Commission can not determine the nature of the probable environmental impact of this project and therefore must deny Consolidated Edison's application.³¹

C. Consolidated Edison's Proposed Route for the M29 Transmission Line Within The City Of Yonkers Seriously, Unnecessarily, And Unreasonably Jeopardizes Public Safety.

Consolidated Edison is proposing a route that puts the public safety in serious jeopardy. Located directly along the route that Consolidated Edison is proposing are Police Headquarters and three (3) Fire Stations including Fire Headquarters and the City's only Fire Rescue Company which is responsible for rescue response for the entire City. The route proposed by Consolidated Edison would entail shutting down all but one lane in each direction on Tuckahoe Road which is an already congested roadway. For the majority of the length of Tuckahoe Road there are no shoulders, parking lanes or fire

³¹ N.Y. PSL §126(1)(b) (McKinney 2007).

lanes. "There are no practical alternate routes capable of handling a diversion from Tuckahoe Road. The closest roads that go straight through from the East Side to the West Side of the City are more than two and three miles to the South and North respectively."³² In fact, Consolidated Edison's own traffic engineer, Mr. Dempsey, testified that, "[i]n certain parts of Tuckahoe Road there would be no alternate road that could be utilized."³³ Yet, Consolidated Edison's Project Engineer, Mr. Mooney Jr., testified that vehicular detours are not a consideration in choosing the route.³⁴ The M29 Project will entail major roadwork and lane closings along several of the City's main arterial roads including: Tuckahoe Road, Saw Mill River Road, Nepperhan Avenue, Old Nepperhan Avenue, and Riverdale Avenue. Old Nepperhan Avenue is only a two lane road that will likely result in a complete closure or be converted to a one way during construction. Response times for emergency vehicles such as police cars, fire trucks and ambulances would be slowed as a result of traffic thereby causing dangerous delays and critically impacting the lives and the safety of the citizens of the City of Yonkers.

The entire length of Tuckahoe Road is patrolled by Police Officers from the First Police Precinct. As such, the patrol officers use Tuckahoe Road as the main East/West route when responding to emergency calls for service. Closing several lanes on Tuckahoe Road for weeks at a time will inevitably make rapid response to many calls impossible and could require diverting police cars from high crime areas, where they are needed, to cover areas in the First Precinct.³⁵ Fire Stations 1, 3, and 10 are all located directly along Consolidated Edison's proposed route. Additionally, several other Fires

³² Tr. p.670 lines 10-13.

³³ Tr. p.329 lines 1-3.

³⁴ Tr. p.330 lines 3-8.

³⁵ Tr. p.670 lines 10-21, Tr. p.671 lines 1-3.

Stations will have their Primary Response Areas adversely affected by construction related traffic. Along Consolidated Edison's proposed route construction related traffic would negatively impact the response times of at least 7 Fire Stations out of 12 total Fire Stations in the City of Yonkers.³⁶ That is, Consolidated Edison's proposed route will effect the response areas of almost two-thirds (2/3) or about sixty percent (60%) of the City's Fire Stations. Yet, Consolidated Edison, without determining how traffic or pedestrians will be detoured during construction,³⁷ without conducting studies to determine how this construction would impact emergency response time,³⁸ and without conducting traffic studies along the route³⁹ has concluded that the impacts from traffic will be minimal.

Consolidated Edison has not yet created a traffic control plan. Consolidated Edison has not yet developed a plan for the coordination of traffic and pedestrian safety during construction. Consolidated Edison has not yet determined how it would enable emergency vehicle access, including police, fire and essential services during construction. In fact, when asked if he knew how many firehouses are located along Consolidated Edison's proposed route in Yonkers, Mr. Dempsey answered, "We have looked at it. We did notice that there are the firehouses or we have been informed that some fire apparatus use these roads along the routes."⁴⁰ But Mr. Dempsey, Consolidated Edison's traffic engineer, could not testify as to the specific number of firehouses located along Consolidated Edison's proposed route.⁴¹ How could Mr. Dempsey possibly

³⁶ Tr. p.671 lines 4-14.

³⁷ Tr. p.329 lines 20-25 – p.330 lines 1-8.

³⁸ Tr. p.848 lines 19-21.

³⁹ Tr. p.371 lines 5-18.

⁴⁰ Tr. p.334 lines 8-14.

⁴¹ Tr. p.334 lines 15-18.

maintain that community safety was a factor when choosing the route if he did not even know the number of fire stations located along the route?⁴²

Fire Station 10 is located on Saw Mill River Road between Tuckahoe Road and Old Nepperhan Avenue in the City of Yonkers. Consolidated Edison's proposed route is slated to proceed down Saw Mill River Road directly in front of this Fire Station. When Mr. Beccalori, Consolidated Edison's Construction Manager, was asked how access to Fire Station 10 would be maintained during construction he stated that because the trench at that area is right in the middle of the street there would be "no problems at all maintaining access" at that Fire Station.⁴³ This however, does not take into account the fact that in order to enter or exit the Fire Station the apparatus requires the entire width of the street to make the turn. Mr. Beccalori further testified that, "[t]o be honest, I didn't measure the driveway, but we would open up half at a time."⁴⁴ This too fails to take into account the fact that Fire Station 10 has only one bay and opening half of the driveway at a time would not enable the fire apparatus to enter and exit the station. When confronted with this fact, Mr. Beccalori testified that a plate could be moved "in less than a minute" to cover the trench so that the apparatus could enter or exit.⁴⁵ This is truly unbelievable. According to this theory the construction crew would have to move a plate to cover the trench whenever the fire station received a call, however, when questioned as to the number of calls Fire Station 10 receives in a typical twenty-four (24) hour period, Mr. Beccalori was unaware.⁴⁶ In fact, Mr. Beccalori, Consolidated Edison's Construction

⁴² Tr. p.333 lines 19-24.

⁴³ Tr. p.1085 lines 9-17.

⁴⁴ Tr. p.1086 lines 8-10.

⁴⁵ Tr. p.1086 lines 8-13.

⁴⁶ Tr. p.1086 lines 14-23.

Manager, has not had any conversations with the fire and police departments in the City of Yonkers regarding potential safety impacts.⁴⁷

It is inconceivable that a plate could be placed over the trench every time a fire station gets a call and that emergency response times will not suffer delays. It is clear that Consolidated Edison has failed to adequately assess and determine the M29 Transmission Line Project's impact to emergency services. Consolidated Edison has not even conducted the most basic assessment in terms of counting the number of fire stations or other emergency services located along the route. In fact, Exhibit 4.2-1 of Consolidated Edison's Application even names the wrong hospital in the City of Yonkers when listing the land uses along its proposed route. In its Application, Consolidated Edison has shown a blatant disregard for the safety of thousands of residents of the City of Yonkers that is reckless and utterly appalling.

D. Consolidated Edison's Proposed Route For The M29 Transmission Line Through The City Of Yonkers Would Seriously Threaten The Integrity Of The Infrastructure Located Along The Route.

Consolidated Edison has chosen a route through the City of Yonkers that contains some of the oldest and most sensitive infrastructure in the City. Even with minimal disturbance the infrastructure is highly susceptible to failure. Infrastructure along Consolidated Edison's proposed route consists of sanitary sewers, storm sewers, combined sewers, county sewer trunk lines, water mains, and most of the City's old trolley tracks are still located underground. Brick sewers are the type mainly found along Consolidated Edison's proposed route and are the most sensitive due to the fact that erosion of joints causes them to collapse more easily. The M29 Project will require deep

⁴⁷ Tr. p.1093 lines 3-6.

trenching of approximately eight (8) to nine (9) feet below grade which inevitably will cause major interferences with the congested utilities that already exist in those areas.⁴⁸

Cast iron water mains that are over 100 years old can be found along Consolidated Edison's proposed route. As work occurs in close proximity to these mains they become more susceptible to breaking. When a water main breaks there would be no water supply in the service area for extended periods of time including fire hydrants.⁴⁹

In some areas of Consolidated Edison's proposed route the transmission line will cross or be located in very close proximity to existing sewers that are as old as one hundred (100) years. Damage to and failure of these sewers is almost certain to occur if they are disturbed due to their age and fragility. Additionally, the sewers along the proposed route in the City of Yonkers cannot be offset over the transmission line due to the fact that they are gravity run and may not be able to go under the line because of the depth of corresponding sewers. Water and gas mains could be offset around Consolidated Edison's transmission line but would require shutting off service for an extended period of time or in some instances total replacement of each line.⁵⁰

Consolidated Edison has not completed its test pits within the City of Yonkers and therefore cannot have an accurate picture of the subsurface conditions within the City of Yonkers. Consolidated Edison's Project Engineer, Mr. Mooney, Jr., testified however, that information elicited by test pits are not used in determining the route.⁵¹

Failure to consider the age and sensitivity of the City of Yonkers' infrastructure and the risk of infrastructure collapse or failure when choosing a route clearly does not

⁴⁸ Tr. P.677 lines 15-21.

⁴⁹ Tr. P.678 lines 3-15.

⁵⁰ Tr. P.679 lines 7-15.

⁵¹ Tr. p.629 lines 14-24.

protect the best interests of the public. Furthermore, without accurate information as to the subsurface conditions Consolidated Edison can not adequately assess the nature of the probable environmental impacts.

E. Consolidated Edison Has Failed To Properly Determine And Address The Economic Impacts Of The Proposed Construction Of The M29 Transmission Line To The Surrounding Community And Local Businesses.

Consolidated Edison states in Exhibit 6 of its Application titled "Economic Effects of Proposed Facility" that, "[t]he project's cost and the relatively short duration of its installation will not impact the local economy sufficiently to induce any significant changes in the local, residential, commercial, or industrial land use patterns."⁵²

Consolidated Edison also concludes that no mitigation measures are required.⁵³ Exhibit 6 fails to set forth the amount and type of businesses located along the route. Exhibit 6 also fails to consider or even mention the multi-billion dollar development projects slated to begin construction in the City of Yonkers in the very near future. Consolidated Edison, "did not do a specific business by business or store front by store front inventory along the proposed route."⁵⁴ Consolidated Edison's proposed route will create severe traffic gridlock, block access to parking spaces, driveways, parking lots, and roadways and will inevitably interfere with deliveries and cause losses in revenue to businesses along the route. Consolidated Edison has not yet reached out to local business owners to hear their concerns.

⁵² Consolidated Edison Application Exhibit 6 p.6-1.

⁵³ *Id.* at p.6-2.

⁵⁴ Tr. p.260 lines 10-13.

The economic impact of the proposed construction of the M29 Transmission Line to the surrounding community and local businesses clearly has not been considered. In preparing the Application and making the statements and conclusions found in Exhibit 6 of Consolidated Edison's Application, Consolidated Edison admits that they have not conducted any studies to determine the kinds of losses businesses along the route would incur.⁵⁵ In fact, of the six route evaluation criteria used by Consolidated Edison in selecting the route, community impacts was not one of them.⁵⁶ Mr. Wolfgang, Consolidated Edison's witness admitted that, "[w]e did not do a quantitative analysis ... of the economic impacts associated with construction of this project."⁵⁷ Viewing the impacts as short term, Consolidated Edison "did not attempt to quantify those impacts."⁵⁸

Without even attempting to quantify the economic impacts of the project it is unclear how Consolidated Edison could arrive at any conclusions that the economic impacts will not be significant enough to "cause changes to the local community." Many of the businesses along Consolidated Edison's proposed route will suffer greatly due to the loss of parking spaces for its customers during construction. Mr. Dempsey testified that, "[t]he actual number of parking spots lost will be determined when the final details of the route are determined in the maintenance protection traffic plans. There will be some loss of parking for that two to four weeks period."⁵⁹ How could Consolidated Edison possibly assess the impact upon local businesses without conducting any studies to determine the kinds of losses that would occur or without knowing how many parking spaces would be lost and for how long a period of time? These are the types of impacts

⁵⁵ Tr. p.306 lines 13-18.

⁵⁶ Consolidated Edison Application Exhibit 3 p.3-3.

⁵⁷ Tr. p.260 lines 20-23.

⁵⁸ Tr. p.261 lines 21-24.

⁵⁹ Tr. p.279 lines 4-9.

that should have a bearing on whether Consolidated Edison's proposed route is approved and yet Consolidated Edison has failed to assess these impacts. In addressing the issue of economic impacts Consolidated Edison relies completely on conclusory statements that the impacts will be short term and insignificant but offers no quantitative data or studies to back these statements.

F. The Route Proposed By The Department Of Public Service Fails To Properly Consider The Impacts To The City Of Yonkers And Should Not Be Adopted By The Commission.

The route proposed by the Department of Public Service Staff ("DPS Staff") is essentially the same as Consolidated Edison's proposed route within the City of Yonkers. As such, based upon the aforementioned reasons, this route must be rejected. DPS Staff failed to properly consider the serious and unnecessary impacts that the proposed route would have upon the City of Yonkers. Department of Public Service witness, Mr. Macks, testified that Consolidated Edison's application, as supplemented and amended, adequately details the projects impacts on the human and natural environments.⁶⁰ Mr. Macks however, was unaware that Consolidated Edison failed to mention or consider any school bus routes within its application.⁶¹ Mr. Macks was also unsure as to whether Consolidated Edison had conducted traffic studies along the proposed route.⁶² Mr. Macks also testified that the reason he requested a detailed listing of all new structures and changes since aerial photographs were taken in 2004 of Consolidated Edison's proposed route was because changes on the ground since the pictures were taken could

⁶⁰ Tr. p.1437 lines 14-19, p.1439 lines 1-8.

⁶¹ Tr. p.1544 lines 10-17.

⁶² Tr. p.1545 lines 2-4.

change his opinion of the route.⁶³ When asked whether he knew of any development projects planned within the City of Yonkers that would assist him in reaching his conclusion as to the route, Mr. Macks testified, "I do not know of any proposed construction. If someone were to bring it to my attention and ask me to assess the impacts I would have done that..."⁶⁴ In formulating his opinion as to the impacts of the route, Mr. Macks did not know about the construction of Ridge Hill Development which will be taking place simultaneously with the M29 Transmission Line Project or the proposed Struever, Fidelco, Cappelli Development project planned for downtown Yonkers.⁶⁵ Furthermore, in supporting Consolidated Edison's proposed route Mr. Strub testified that Consolidated Edison has performed similar underground construction without issues in Westchester County.⁶⁶ However, when questioned as to these "similar" projects Mr. Strub admitted that these projects were less than a third of the size of the M29 Transmission Line Project⁶⁷ and that construction related impacts such as noise and traffic would be less than those for the M29 project due to the shorter duration of construction.⁶⁸ Finally, when questioned as to the direction in which Tuckahoe Road travels, Mr. Schrom testified that it was a north-south road.⁶⁹ Construction along almost the entire length of Tuckahoe Road is a major concern for the City of Yonkers due to the fact that it is one of the main East to West corridors within the City and cannot be easily or safely detoured. The fact that Mr. Schrom did not even know the direction in which Tuckahoe Road the one of the City's major East to West corridors, travels is quite

⁶³ Tr. p.1547 lines 17-18.

⁶⁴ Tr. p.1548 lines 1-8.

⁶⁵ Tr. p.1549 lines 6-18.

⁶⁶ Tr. p.1467 lines 1-24.

⁶⁷ Tr. p.1567 lines 21-24 – p.1568 line 1.

⁶⁸ Tr. p.1568 lines 6-9.

⁶⁹ Tr. p.1573 lines 1-4.

troublesome considering the City has made its concerns regarding traffic on Tuckahoe Road, very clear.

DPS Staff are charged with protecting the interests of the general public. It seems as though DPS Staff does not have enough information about Consolidated Edison's proposed route within the City of Yonkers to conclude that that the impacts will be temporary and minimal. Mr. Macks testified, "I don't know what Con Ed was aware of or identified or failed to identify." This is plainly unacceptable. In order to understand the nature of the probable environmental impacts of Consolidated Edison's proposed route or DPS Staff's proposed route it is certainly necessary to identify and assess all of these impacts which Consolidated Edison and DPS Staff clearly have not done.

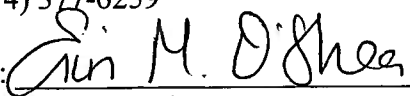
CONCLUSION

For all of the above reasons the Public Service Commission should deny Consolidated Edison's Application for a Certificate of Environmental Compatibility and Public Need under Article VII of the Public Service Law.

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Respectfully submitted,

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